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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/581,021	06/08/2000	TOSHIYA TAKEKUMA	1776/00050	9733
30678 7590 05/29/2008 CONNOLLY BOVE LODGE & HUTZ LLP 1875 EYE STREET, N.W. SUITE 1100 WASHINGTON, DC 20036				
EXAMINER				
GORT, ELAINE L				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/581,021

**Applicant(s)**

TAKEKUMA ET AL.

**Examiner**

Elaine Gort

**Art Unit**

3687

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 71-89 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 71-89 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 79 and 86 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 79 recites the limitation "the total amounts" in line 14. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 71-89, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. (US Patent 5,794,207) in view of Examiner's Official Notice.

Walker et al. discloses the claimed goods dealing apparatus for buying and selling goods by pre-engagement (see Walker et al. abstract disclosing an Internet system for taking multiple buyer's binding purchase offers and matching these offers to

sellers to form binding sales contracts, see also figure 1 showing the networked system.

Note: Regarding where the market prices decline, Examiner has modified Walker below with Official Notice of selling goods that decrease in market value with time to incorporate goods that for example are perishable), comprising: storage means for storing selling and buying information (for example see figure 2); first, second and third dealing processing means for executing a first, second and third sale where buyer and seller information are sent to and stored in the database, such as shown in figure 2, and sellers and buyers must subscribe, or sign into the service (see seller account in figure 2 and buyer and seller accounts disclosed in column 12 line 66);

***but is silent regarding*** the goods sold on the system decreasing in value over time; and buyers entering desired buying date information and goods arrival place.

The Examiner takes Official Notice that it is old and well known in the art of trade for prices of goods to become lower with time as these goods may be, for example, perishable, become less desirable due to trends/fads/seasons and/or depreciate. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the apparatus of Walker et al. with the sale of goods that have prices that become lower with time as taught by Examiner's Official Notice, in order to sell goods that are perishable, become less desirable due to trends/fads/seasons, and/or depreciate.

The Examiner takes Official Notice that it is old and well known in the art of trade for buyers to include purchase dates and delivery locations in purchase agreement contracts to ensure the goods procured arrive at a specified location when the buyer

needs them and to know the total price which includes delivery. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the buyer's binding purchase offers apparatus as modified above with the inclusion of purchase dates and delivery locations as taught by Examiner's Official Notice, in order to ensure the goods procured arrive at a specified location when the buyer needs them and to know the total price.

(Regarding generating multiple sales) Walker et al. is capable of generating multiple sales by matching a first buyer to a first seller, a second buyer to a second seller, etc... Therefore goods can be sold via the subsequent processing means after goods are sold via previous dealing processing means. Walker et al. is capable of generating multiple sales by matching a first buyer to a first seller, a second buyer to a second seller, etc... Therefore goods can be sold via subsequent processing means after goods are sold via previous dealing processing means. Walker stores information in buyer and seller databases such as the ones shown in figure 2 which are accessed and compared in order to match buyers and sellers, the system processes the data in some form of processing order in order for the data to be compared to make a match. For example the data is processed/organized by the type of goods desired to compare sellers to buyers having and wanting the same good type.

(Regarding multiple sales at varying prices) Walker discloses the ability to process multiple sales and therefore is capable of processing a deal where a first seller desires a higher price and is matched with a buyer offering a higher price to generate a

sale and later to process a deal where a second seller desiring a lower price is matched with a buyer offering a lower price to generate a sale.

(Regarding clustering of selling and buying information) Walker stores buyer's information which includes information such as a description of goods, figure 5, this is stored in a database which is searched to match seller's information. Examiner takes Official Notice that it is old and well known in the art of database management to sort and/or organize data into categories to provide fast access to the organized data. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the computer system as modified above with the capability to sort and/or organize data as taught by Examiner's Official Notice, in order to provide fast access to the buyers' data (such as faster processing time).

(Regarding plural levels in clusters) Examiner takes Official Notice that it is old and well known in the art of database management to sort and/or organize data into categories and subcategories to provide fast access to the organized data. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the computer system as modified above with the capability to sort and/or organize data into categories and subcategories as taught by Examiner's Official Notice, in order to provide fast access to the sellers' data (such as faster processing time. For example the category may be "airline tickets" and the subcategory may be "flights to Australia". In this scenario only seller information relating to tickets to Australia is matched with buyer's desiring tickets to Australia.

(Regarding arrival information/shipping) Examiner has modified Walker above to include a delivery date and location so buyers can have the goods when they need them.

(Regarding distribution costs) Examiner takes Official Notice that it is old and well known in the art of supply chain automation to use delivery cost tables to provide buyers and/or seller's with a total cost for the goods that includes delivery and to compare these total costs that include shipping in order to find the best priced item overall in order to reduce expenses. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the system as modified above with a delivery cost table that is used to calculate total costs for goods sold as taught by Examiner's Official Notice, in order to provide buyers and sellers with delivery costs so it can be incorporated into the price. For example this shipping cost amount could be defined to the buyer before their offer is submitted to the sellers, or presented with the seller's counter offer.

### ***Response to Arguments***

3. Applicant's arguments filed 2/11/08 have been fully considered but they are not persuasive.

1) Applicant argues that Walker does not disclose the claimed first, second and third dealing processing.

Examiner contends that Walker discloses the three deal processing means. For example the first being where the seller accepts the buyers CPO (for example see

column 9, lines 17+ and figures 10 and 11), the second when the buyer accepts the seller's counter offer and the third scenario when the buyer and seller are able to reach an agreement when buying conditions of the buyers information (such a desire to rent a luxury car stored within the CPO) agrees with seller information stored (such as renting of luxury cars stored within the sellers database, column 18, lines 30+).

2) Applicant argues that Walker nowhere discloses "first clustering means for clustering pieces of selling information according to goods attributes included in said selling information" nor "second clustering means for clustering pieces of buying information according to goods attributes included in said buying information."

The Examiner finds that it is general knowledge in data processing to sort and organize data into categories and subcategories to organize the data and to provide fast access to the organized data and has taken Official Notice of this sorting and delineation of data. Examiner also notes that Walker does disclose some "clustering" of buying information in column 9 lines 7+).

3) Applicant argues that the combination of Walker and Examiner's Official Notice does not disclose providing buyers with a total amount including distribution costs for plural pieces of selling information of sellers.

The Examiner finds that it is general knowledge to calculate shipping costs using delivery cost tables to provide buyer's and seller's with the cost for delivery of goods so it can be incorporated into the cost of the goods and has taken Official Notice of delivery cost tables and calculating a total cost amount. This total cost calculation can be carried out on multiple sales items and be presented to a single or more than one buyer.



4) Applicant argues that the Official Noticed facts are not considered to be common knowledge or well-known in the art.

The Applicant has traversed the examiner's reliance on "common knowledge". To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art MPEP Sec. 2144.03(C). See 37 CFR 1.111(b). See also *Chevenard*, 139 F.2d at 713, 60 USPQ. The Applicant has merely made a blanket statement contesting the official notice taken without pointing out how the specific official notice is erroneous. For example how it is not old and well known in the art of trade for some goods to decrease in value over time?

### ***Conclusion***

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elaine Gort whose telephone number is 571/272-6781. The examiner can normally be reached on Monday and Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gort Matthew can be reached on 571/272-3955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Elaine Gort/  
Primary Examiner, Art Unit 3687

May 20, 2008